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SELECT PORTFOLIO SERVICING, INC. (erroneously sued as SELECT PORTFOLIO SERVICES, INC.) and NATIONAL DEFAULT SERVICING CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAFAEL VILLANUEVA) CASE NO. 5:14-cv-05238-BLF
Plaintiff,)
vs.)
SELECT PORTFOLIO SERVICES, INC.,)
NATIONAL DEFAULT SERVICING)
CORPORATION; and DOES 1-100)
Defendants.)
)
) DEFENDANTS' CASE
) MANAGEMENT STATEMENT AND
) [PROPOSED] ORDER
)
) Date: April 16, 2015
) Time: 1:30 p.m.
) Place: Courtroom 3, Fifth Floor
)
) Complaint Filed: November 12, 2014
)

Defendants Select Portfolio Servicing, Inc. (“SPS”) (“erroneously sued as Select Portfolio Services, Inc.”) and National Default Servicing Corporation (“NDSC”) (collectively with SPS, “Defendants”) provide the following Case Management Statement¹:

1. JURISDICTION AND SERVICE

¹ Defendants' counsel attempted to confer with Plaintiff's counsel, Elias Portales, regarding the Joint Case Management Statement. Counsel for Defendants provided Mr. Portales with a draft Joint Case Management Statement for his review and edit. Mr. Portales did not respond or otherwise contribute to the Joint Case Management Statement as of the date of this filing.

1 This Court has subject matter jurisdiction over this action pursuant 28 U.S.C. § 1332(a)
 2 because there is complete diversity between Plaintiff and Defendants and the amount in controversy
 3 exceeds \$75,000. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b) because the
 4 property that is the subject of this case is located in Santa Clara County, California. All parties have
 5 been served.

6 **2. FACTS**

7 **A. Defendants' Statement**

8 Plaintiff obtained a mortgage loan from GreenPoint Mortgage Funding, Inc. ("GreenPoint")
 9 in the amount of \$312,000 on or about June 7, 2006. This loan was secured by a deed of trust
 10 ("Deed of Trust") recorded against the Property. The Deed of Trust provided that the lender was
 11 GreenPoint, the trustee was Marin Conveyancing Corp., and the beneficiary was Mortgage
 12 Electronic Registration Systems, Inc. ("MERS"). An Assignment of Deed of Trust whereby MERS
 13 transferred its interest in Plaintiff's Deed of Trust to Bank of New York Mellon FKA The Bank of
 14 New York, as trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2006-OC7,
 15 Mortgage Pass-Through Certificates, Series 2006-OC7 was recorded against the Property on July 2,
 16 2012. A Substitution of Trustee was recorded against the Property on June 2, 2014, substituting
 17 NDSC as trustee under the Deed of Trust as of May 23, 2014.

18 On or about June 2, 2014, a Notice of Default was recorded against the Property, reflecting a
 19 past due amount of \$21,736.55 as of May 30, 2014. A Notice of Trustee's Sale was recorded on
 20 September 16, 2014. The Property was sold at a public auction on December 19, 2014.

21 Plaintiff asserts various claims regarding the servicing of his mortgage loan and the events
 22 leading up to the foreclosure sale of the Property. Defendants dispute Plaintiff's allegations.

23 **3. LEGAL ISSUES**

24 **A. Defendants' Statement**

25 Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a claim on
 26 December 3, 2014, which is set to be heard on April 23, 2015. Plaintiff's opposition was due on
 27 December 17, 2014. As of the date of this filing, Plaintiff has not opposed Defendants' motion to
 28 dismiss.

1 In their motion to dismiss the complaint, Defendants argued that the entire complaint should
 2 be dismissed because Plaintiff's allegations fail to give Defendants fair notice in violation of Rule
 3 8(a). In addition, Defendants' motion to dismiss argued that Plaintiff's claims fail to state a claim
 4 because they are each contradicted by established case law or insufficiently pled.

5 **4. MOTIONS**

6 Defendants filed a motion to dismiss the complaint, which is set to be heard on April 23,
 7 2015. Defendants intend to file a motion for summary judgment, if necessary.

8 **5. AMENDMENT OF PLEADINGS**

9 Defendants expect that Plaintiff may file an amended complaint if Defendants' motion to
 10 dismiss the complaint is granted with leave to amend.

11 **6. EVIDENCE PRESERVATION**

12 Defendants certify that they have reviewed the Guidelines Relating to the Discovery of
 13 Electronically Stored Information ("ESI Guidelines"). Defendants attempted to meet and confer
 14 with Plaintiff's counsel regarding the requirement to take reasonable and proportionate steps to
 15 preserve evidence relevant to the issues reasonably evident in this action.

16 **7. DISCLOSURES**

17 Initial Disclosures pursuant to the Federal Rules of Civil Procedure 26 have not yet been
 18 made. Defendants propose that Initial Disclosures be served within 30 days of the date Defendants
 19 file their Answers.

20 **8. DISCOVERY**

21 No formal discovery has been taken to date as the pleadings are not yet at issue; in particular
 22 it is not clear what claims and allegations will survive Defendants' motions to dismiss the FAC. *See*
 23 *Rutman Wine Co v. E.G Gallo Winery*, 829 F.2d 729, 737 (9th Cir. 1987).

24 With that in mind, Defendants propose the following discovery plan:

25 Deadline	26 Proposed Date
26 Discovery Cutoff	240 days after Defendants file an Answer
27 Plaintiff's Expert Disclosures	45 days before Discovery Cutoff
28 Defendants' Expert Disclosures	15 days before Discovery Cutoff

1	Dispositive Motions Due	30 days after Discovery Cutoff
2	Hearing on Dispositive Motions	Court to set date(s)
3	Pretrial Conference	2 weeks before trial
4	Trial	Court sets date

5. **CLASS ACTION**

6. This is not a class action.

7. **RELATED CASES**

8. There are no related cases.

9. **RELIEF**

10. **A. Defendants' Statement**

11. Defendants deny that Plaintiff is entitled to any of the relief that he seeks from Defendants.

12. **SETTLEMENT AND ADR**

13. The parties have not engaged in settlement discussions and have not participated in any ADR programs. Defendants do not believe that this case is suitable for ADR because the Property has already been sold at a foreclosure sale and, as a result, Defendants are unable to consider Plaintiff for a loan modification.

14. **CONSENT TO A MAGISTRATE JUDGE**

15. All parties have not consented.

16. **OTHER REFERENCES**

17. Defendants do not believe this case is suitable for referral to other processes at this time.

18. **NARROWING OF ISSUES**

19. The issues have not yet been narrowed but Defendants anticipate that they will be narrowed as a result of Defendants' motions to dismiss the complaint.

20. **EXPEDITED TRIAL PROCEDURE**

21. There appear to be no grounds upon which to handle this case on an expedited basis.

22. **SCHEDULING**

23. *See section 8, supra.*

24. **TRIAL**

1 Defendants predict trial will take approximately 3-5 days.

2 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

3 **A. Defendants' Statement**

4 1. Select Portfolio Servicing, Inc. ("SPS"), a wholly owned subsidiary of SPS Holding
5 Corp., a privately held Delaware corporation, whose sole shareholder is Credit Suisse (USA), Inc.

6 2. Defendant National Default Servicing Corporation ("NDSC").

7 3. Non-party U.S. Bank National Association as indenture trustee for Greenpoint
8 Mortgage Funding Trust 2006-HE1 ("U.S. Bank"). U.S. Bank is the current beneficiary under the
9 Deed of Trust secured by the Property that is the subject of Plaintiff's Complaint.

10 **20. PROFESSIONAL CONDUCT**

11 Counsel for Defendants have reviewed the Guidelines for Professional Conduct for the
12 Northern District of California.

13 **21. OTHER MATTERS**

14 None

15 Dated: April 9, 2015

16 Respectfully submitted,

17 LOCKE LORD LLP

18 By: /s/ Lindsey E. Kress

19 Regina J. McClendon

20 Lindsey E. Kress

21 *Attorneys for Defendants*

22 SELECT PORTFOLIO SERVICING, INC.
23 (erroneously sued as SELECT PORTFOLIO
24 SERVICES, INC.) and NATIONAL DEFAULT
25 SERVICING CORPORATION

26 //

27 //

28 //

//

CASE MANAGEMENT ORDER

The above DEFENDANTS' CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated: _____

Hon. Beth Labson Freeman

UNITED STATES DISTRICT JUDGE

Locke Lord LLP
44 Montgomery Street, Suite 4100
San Francisco, CA 94104